

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NICK A. ZAWADA and VALENTYNA
ZAWADA, individually and on behalf of
their marital community, and NICK A.
ZAWADA as natural father and natural
guardian of D.Z.,
Plaintiffs,
v.
UNITED STATES OF AMERICA,
Defendant.

NO. 2:14-CV-00288-SAB

**ORDER DENYING MOTION
FOR ENTRY OF STIPULATED
PROTECTIVE ORDER**

Before the Court is Defendant's Motion for Entry of Stipulated Protective Order. ECF No. 19. The parties seek a protective order "to facilitate the disclosure of certain discovery material between the parties and to aid in the prompt resolution of disputes over confidentiality." This motion was heard without oral argument.

The product of pretrial discovery is presumptively public, although Federal Rule of Civil Procedure Rule 26(c) permits a district court to override this presumption upon a showing of "good cause." *San Jose Mercury News, Inc. v. U.S. District Court—Northern Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999). Rule 26(c) provides that a "court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue

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1 burden or expense.” Prior to the grant of a protective order, the moving party must
2 certify it has “conferred or attempted to confer with other affected parties in an
3 effort to resolve the dispute *without court action*.” Fed. R. Civ. P. 26(c) (emphasis
4 added).

5 Where the parties agree, as here, that certain information should remain
6 confidential, it may be prudent to enter into an agreement setting forth in writing
7 what information shall remain private. It is unnecessary, however, for such an
8 agreement to have this Court’s imprimatur. A Court issued protective order is less
9 necessary since Rule 5(d) was amended to only require filing discovery material
10 actually used in support of an action. Because not all discovery material need be
11 filed, most discovery material is not readily accessible to the public. Therefore, the
12 primary concern regarding confidential materials is how the parties themselves
13 handle such material. This Court will not hesitate to issue a protective order when
14 it is necessary, however, the moving party or parties must demonstrate good cause
15 exists and bears the “burden of showing specific prejudice or harm” that will result
16 if no protective order is granted. *Phillips v. G.M. Corp.*, 307 F.3d 1206, 1210-11
17 (9th Cir. 2002). In other words, the moving party must demonstrate why the
18 parties cannot resolve the issue without court action—a standard that will
19 generally not be met when the parties agree to the terms of a proposed protective
20 order.

21 The motion at hand fails to demonstrate specific harm or prejudice that will
22 result if no protective order is granted. Additionally, the parties appear to be in
23 agreement on what material is appropriate for discovery and how it should be
24 handled. Accordingly, the Court denies the stipulated motion for protective order.

25 The proposed protective order also contained instructions for filing certain
26 materials under seal. A higher standard applies to sealing orders as they relate to
27 discovery materials in support of dispositive motions. In order for a court to seal
28 records associated with a dispositive motion, it must base its decision on a

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1 compelling reason tied to an articulated factual basis without relying on
2 conjecture. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.
3 2003). The compelling basis standard is more stringent than the Rule 26(c) good
4 cause standard. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 679 (9th Cir.
5 2009). Because the parties have failed to demonstrate that even good cause exists
6 to support this motion, they have also failed to provide a compelling basis for
7 sealing any records that may be filed in support of any dispositive motions.

8 The Court encourages the parties to continue cooperating with respect to the
9 handling of potentially sensitive discovery material. The parties may, upon proper
10 showing tied to specific discovery material, move the Court to seal certain
11 discovery filings.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 Defendant's Motion for Entry of Stipulated Protective Order, ECF No. 19,
14 is **DENIED**.

15 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
16 file this Order and provide copies to counsel.

17 **DATED** this 22nd day of October 2015.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

23 Stanley A. Bastian
24 United States District Judge
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